

WQIA for CBE-09-058 – 106 Falling Creek Circle.

Staff report for the February 11, 2009, Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

**Summary Facts**

Applicant	Christal O’Conner
Land Owner	Daniel and Christal O’Conner
Location	106 Falling Creek Circle, Williamsburg, Virginia
Parcel Identification	4520200229
Staff Contact	Patrick Menichino      Phone: 253-6675

**Project Summary and Description**

Ms. Christal O’Conner of 106 Falling Creek Circle, Williamsburg, Virginia, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of a 10’ x 14’ wood frame storage shed totaling approximately 140 square feet. The lot is located in First Colony and was recorded prior to the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, a perennial water body and wetlands adjacent to the rear of the property was identified thereby requiring a 100’ landward RPA buffer. The lot is 0.87 acres in size and the RPA buffer encompass approximately 42% of the lot or 0.36 acres. The wood frame storage shed will encroach in the landward 50’ RPA buffer.

An RPA mitigation planting plan has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting (1) native canopy tree and (3) native shrubs to filter runoff. The amount of plantings proposed meets the standard mitigation planting requirements of the County.

Staff evaluated the request for the wood frame storage shed, and considers it to be an accessory structure, and as such cannot be granted an administrative exception. Staff has not administratively approved the installation of accessory structures within the RPA in the past. However, the Board has in the past granted exceptions for accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. The applicants have applied for an exception to allow for a 10’ x 14’ wood frame storage shed within the RPA buffer, creating 140 square feet of impervious area.

2. The applicants have submitted an RPA mitigation planting plan that meets the standard mitigation planting requirements of the County.
3. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

### **Brief History**

The lot was recorded before the adoption of the Ordinance, and no RPA existed on the lot at that time. In 2004 the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. A perennial water body at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot. This 100 foot RPA buffer encompasses about 42% of the lot.

According to provisions of Section 23-7; the Manager may grant administrative approval for encroachments into the buffer, on a lot or parcel recorded prior to August 6, 1990. In this case, the exception request is for a wood frame storage shed within the 100 foot buffer and the Manager has determined that this case does not qualify for an administrative waiver because the request is for an accessory structure. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

### **Water Quality Impact Assessment**

Under Section 23-14 of the amended Ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a WQIA for this project and proposes to mitigate for the impacts to the RPA by planting, (1) native canopy tree, and (3) native shrubs, in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 140 square feet of impervious area created by the installation of the wood frame storage shed within the RPA buffer. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance.

### **Recommendations**

Staff has evaluated the request for the wood frame storage shed and has determined it to be an accessory structure and therefore according to the Ordinance it cannot be granted by administrative exception. To be consistent with the ordinance requirements Staff can not support the approval of this exception request for an accessory structure.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements must be completed within 90 days following Board approval.
3. Implementation may be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), and through a form of surety satisfactory to the County Attorney.
4. The size of the mitigation trees shall be 1" caliper 6'-7' tall, and the shrubs shall be 3-5 gallon size 15"-18" tall. All trees and shrubs shall be native species approved by the Environmental Division.

Staff Report prepared by: \_\_\_\_\_

Patrick T. Menichino  
Compliance Specialist

CONCUR:

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Scott J. Thomas,  
Secretary to the Board

Attachments: